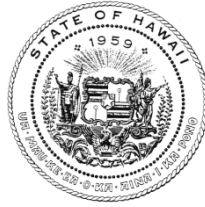


DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR

PAULA A. YOUNGLING  
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII  
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**TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO THE SENATE COMMITTEE  
ON  
WAYS AND MEANS  
APRIL 2, 2015, 9:00 a.m.**

**HOUSE BILL 1292 HD 2 SD 1  
RELATING TO PROCUREMENT**

Chair Tokuda, Vice-Chair Kouchi, and members of the committee, thank you for the opportunity to submit testimony on HB1292 HD2. The State Procurement Office (SPO) is in support of this bill and provides the following comments.

The SPO suggests this instead of creating a new task force the Legislature extend the duration of an existing task force known as the Procurement Task Force. In 2013, the Twenty-Seventh Legislature adopted SCR92 SD2, which requested the Comptroller establish a Procurement Task Force to study the State procurement code and identify amendments that would increase economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, to include analysis on past performance. The Procurement Task Force is set to dissolve on June 30, 2015. Because the membership is very similar to that identified in this measure and because consideration of past performance and its statewide implementation can fit within the Procurement Task Force's scope of work, the SPO suggests this group continue its work by focusing on standards for past performance.

This solution is efficient and logical because, instead of starting from scratch, it makes use of a group that is already in existence and it leverages a task force that we already know works. SPO also suggests a provision wherein the Comptroller has the discretion to add additional members to the task force as appropriate.

Thank you.

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

April 2, 2015

TO: HONORABLE JILL TOKUDA, CHAIR, HONORABLE RON KOUCHI, VICE CHAIR, COMMITTEE ON WAYS AND MEANS

SUBJECT: **SUPPORT & AMENDMENTS TO H.B. 1292, HD2, SD1 RELATING TO PROCUREMENT.** Establishes a procurement task force to identify and propose amendments, if any, to the procurement code that may better promote economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, specifically regarding statewide past performance standards and processes. Takes effect on 7/1/2030. (SD1)

Decision Making

DATE: Thursday, April 2, 2015  
TIME: 9:00 a.m.  
PLACE: Conference Room 211

Dear Chair Tokuda and Vice Chair Kouchi and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over hundred five hundred eighty (580) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA supports H.B. 1292, HD2, SD1 which proposes to form a Past Performance Procurement Task Force because further study is needed to ensure criteria regarding inadequate performance or past performance in public works construction contracts can be fairly implemented and avoid unintended consequences. With regard to the proposed members of the task force, we encourage the Committee to consider adding a representative from the construction industry that bid public works, and thus recommend adding the Building Industry Association of Hawaii and removing the AFL-CIO, as two other members are already AFL-CIO members.

For the past two years GCA has been participating in a Procurement Task Force which identified issues of concern with regard to the procurement of public works construction projects - identifying bad contractors was one of the issues identified. **It is important to note that past performance can already be considered in the procurement process under HRS 103D-302(f), Invitation for Bid process, as deemed appropriate by the contracting agencies. Such consideration of past performance does not require a law change; instead it can be implemented through use of current law.** GCA prefers developing and testing criteria determining "inadequate performance" using current law before considering laws that dictate criteria and implementation across the board. Concerns such as closing the door on new small businesses wanting to get into construction with no past performance and who would be doing the rating as well as their objectivity, consistency and fairness need further discussion. Due process concerns also need vetting for those who may feel they have been unfairly rated. In short, the issue is not as simple as it may appear and warrants further review.

Thank you the opportunity to share our support for H.B. 1292, HD2, SD1 and for considering proposed amendments.



State of Hawaii  
Senate Committee on Ways and Means  
The Honorable Senator Jill N. Tokuda, Chair  
The Honorable Senator Ronald D. Kouchi, Vice Chair  
Hawaii State Legislature

Thursday, April 2, 2015; 9:00 a.m.  
Room 211

HB 1292, HD2, SD1 Relating to Procurement

Dear Chair Tokuda, Vice-Chair Kouchi and Members of the Committee on Ways and Means,

The five non-profit human services organizations identified in this testimony are writing to **support** HB1292, HD2, SD1 that would establish a task force "...to examine the issue of past performance" in order to work toward increasing transparency and accountability in public contracts.

As nonprofit human service organizations we often bid on RFPs under 103F when state departments seek to procure purchase of service contracts. Currently there is no consideration of past performance of the bidding contractors in determining which organization in a competitive bidding process should receive the award. While previous experience related to the services being procured is a factor in evaluating proposals, most human services contracts are put out to competitive re-bid anywhere from once a year to every six years. It would make sense for state departments to consider past performance in their evaluation process in the competitive bidding process. This would ensure the taxpaying public that state government is awarding contracts to providers who have demonstrated previous strong/satisfactory performance. Conversely evaluating past performance would also ensure that contractors whose past performance was unsatisfactory/poor would be scored lower on their proposals and would not receive a contract award.

While it is important for providers to submit responsive proposals that meet the specifications in the RFP, by adding past performance as a factor in evaluating proposals, the strength of the proposal writing alone would not be the only factor in scoring and decision-making. It is conceivable that a bidder might have performed poorly on the same services in the past and yet might submit a very well-written proposal. Currently, in such a situation, the bidder would have a strong probability of receiving an award since past performance is not considered. This does not serve the public or the state's interest very well.

While we support this legislation, one amendment we would propose is that the task force should include a representative or two from nonprofit organizations for the 103F health and human services contracts. Our suggestion is that a staff member from HANO (Hawaii Alliance of Nonprofit Organizations) and a staff member from PHOCUSED (Protecting Hawaii's 'Ohana Children Under-Served Elderly and Disabled) should be included. These organizations typically don't bid on 103F contracts but represent many organizations like ours that do.

Mahalo for the opportunity to submit testimony. We can be contacted for further information or if there are any questions.

Sincerely,

Jerry Rauckhorst  
President & CEO  
Catholic Charities Hawaii

Howard S. Garval  
President & CEO  
Child & Family Services

Marian E. Tsuji  
President & CEO  
Lanakila Pacific

Laura Smith  
President & CEO  
Goodwill Industries Hawaii

Jan Dill  
President & CEO  
Partners In Development

**HB1292**

Submitted on: 4/1/2015

Testimony for WAM on Apr 2, 2015 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Hawaii Procurement Institute	Hawaii Procurement Institute	Support	No

Comments: The Hawaii Procurement Institute (HPI) supports HB 1292, establishing a past performance task force, and requests to have a position on the task force. We note however the State Procurement Office concerns raised in connection with earlier versions of this bill. We support the SPO efforts at promoting sound procurement policy and respectfully ask to be part of the conversation concerning this measure should it advance. HPI is a neutral, independent procurement think tank and education institute devoted to delivering quality study and instruction in all areas of international, federal state and local procurement laws, which impact public employees, private contractors, and state, national and international markets. HPI aims to promote effective positive economic development through its policy analysis and advice. HPI offers conferences, workshops and programs geared toward government officials, public and private legal practitioners, and students interested in keeping current in the practices and policies of government procurement. Mahalo.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)



*A'ohe hana nui ka alu'ia*  
*"No Task Is Too Big When Done Together By All"*

**HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO**

735 Bishop Street, Suite 412 \* Honolulu, Hawaii 96813  
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*Executive Director*

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Local 627

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Operative Masons & Plasterers  
Local 630

**ART TOLENTINO**  
Sheetmetal Workers, I.A. Local 293

**RONAN KOZUMA**  
Hawaii Teamsters & Allied  
Workers Local 996

**VAUGHN CHONG**  
Roofers, Waterproofers & Allied  
Workers United Union of Roofer  
Local 221

April 2, 2015

Honorable Senator Jill N. Tokuda, Chair  
Honorable Senator Ronald D. Kouchi, Vice Chair  
Members of the Committee on Ways and Means  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

**RE: SUPPORT WITH AMENDMENTS** HB1292, HD2, SD1 RELATING TO PROCUREMENT  
Hearing: Thursday, April 2, 2015, 9:00 a.m. Conference Room 211

Honorable Chair, Vice Chair and Committee Members;

The Hawaii Building & Construction Trades Council, AFL-CIO (HBCTC) is a chartered member of the Building and Construction Trades Department, AFL-CIO which was first organized in 1908 and is comprised of 16 out of 17 construction trade unions with 386 state, local and provincial councils in the United States and Canada and an estimated 20,000 members locally. Our primary mission being to provide employment opportunities and living wages for many of Hawaii's working men and women in the construction industry.

The Council supports the intent of HB1292, HD2, SD1 which proposes to establish a procurement task force to identify and propose amendments, if any, to the procurement code that may better promote economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, specifically regarding statewide past performance standards and processes.

HBCTC supports further discussion of how to improve our procurement process for public works to better promote economy, efficiency, effectiveness, and impartiality. As such, we would like to propose amendments to HB1292, HD2, SD1 as attached in the proposed draft SD2.

Removing the word cost and inserting the proposed language ensures that the discussion remains universal and not specific to cost. HBCTC believes the procurement process is working as intended to ensure public confidence, fairness, objectivity and due process when contracting for public works construction projects and policy discussions should not be based solely on cost, but on the benefits to the public.

HBCTC respectfully requests the correction of an apparent inadvertent error whereby reference to AFL-CIO should be included as a part of reference to the Hawaii Building and Construction Trades Council, AFL-CIO (HBCTC) as the HBCTC is the formally

sanctioned and recognized entity under the AFL-CIO and North America's Building Trades Unions as the locally recognized and sole authority regarding matters that involve the building and construction trades in Hawaii.

Lastly, to ensure fair representation from the construction industry, as a stakeholder and current member of the Procurement Code Task Force established by Senate Concurrent Resolution No. 92, S.D. 2 (2013), HBCTC respectfully requests that Section 2(b)(14) be delated and that the voting members of the task force be limited to those included in the measure. Currently, other stakeholders have been allowed to attend and freely participate in discussions, however, when it comes to voting matters, it is imperative that a fair and impartial representation of the industry exists in order to maintain fairness and objectivity.

Thank you for this opportunity to offer amendments to HB1292, HD2, SD1.

HOUSE OF REPRESENTATIVES  
TWENTY-EIGHTH LEGISLATURE,  
2015  
STATE OF HAWAII

**H.B. NO.** 1292  
H.D. 2  
S.D. 1  
S.D. 2  
PROPOSED

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## A BILL FOR AN ACT

RELATING TO PROCUREMENT.

### **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The procurement task force was established pursuant to Senate Concurrent Resolution No. 92, S.D. 2 (2013), to study the **[cost]** impacts that the procurement process has had for public works construction projects **in an effort to promote economy, efficiency, effectiveness, and impartiality in state and county procurement.** as well as the existing bid preferences in relation to promoting

economy, efficiency, effectiveness, and impartiality in state and county procurement. The expertise of such a task force is needed to study the issue of past performance to better understand how that information should be used in the procurement process. The purpose of this Act is to work toward increasing transparency and accountability in public contracts by establishing a task force to examine the issue of past performance.

SECTION 2. (a) The department of accounting and general services shall convene a procurement task force to examine the cost impacts that the procurement process has had for public works construction projects, and specifically to examine and recommend past performance standards and statewide processes in order to promote economy, efficiency, effectiveness, and impartiality in procurement for state and county governments.

(b) The comptroller or the comptroller's designee shall serve as the chair of the task force, and the comptroller shall solicit the following representatives and representatives from the following entities to serve on the task force; provided that those persons designated shall be knowledgeable of procurement procedures and issues within their respective organizations:

- (1) The state procurement office;
- (2) The University of Hawaii;
- (3) The department of education;
- (4) The office of Hawaiian affairs;
- (5) The department of transportation;



- (6) A county procurement department;
- (7) A county board or department of water supply;
- (8) The semi-autonomous public transit agency of the city and county of Honolulu;
- (9) The Subcontractors Association of Hawaii;
- (10) The General Contractors Association of Hawaii;
- (11) The Hawaii Building and Construction Trades Council, AFL-CIO;

~~[(12) —AFL-CIO.]~~

~~[(13)]~~ 12 The Hawaii Construction Alliance; and

~~[(14) —Any additional representatives deemed necessary by the comptroller.]~~

(c) The task force is requested to identify and propose amendments, if any, to the state procurement code that may better promote economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, specifically regarding statewide past performance standards and processes.

(d) Task force members shall serve without compensation but shall be reimbursed for all necessary expenses, including travel expenses, which are incurred in the performance of their duties as members of the task force.

(e) No member shall be made subject to chapter 84, Hawaii Revised Statutes, solely because of that member's participation as a member of the task force.

(f) The task force shall submit a report of its findings and recommendations, including any proposed

legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2016.

(g) The task force convened pursuant to this Act shall cease to exist on June 30, 2016.

SECTION 3. This Act shall take effect on July 1, 2030.